

Supreme Court, U.S.

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NO. 87-1558

IN THE SUPREME COURT OF THE UNITED
STATES

OCTOBER TERM, 1987

STATE OF OHIO
Petitioner

-vs-

WILLIAM E. MURPHY
Respondent

REPLY TO BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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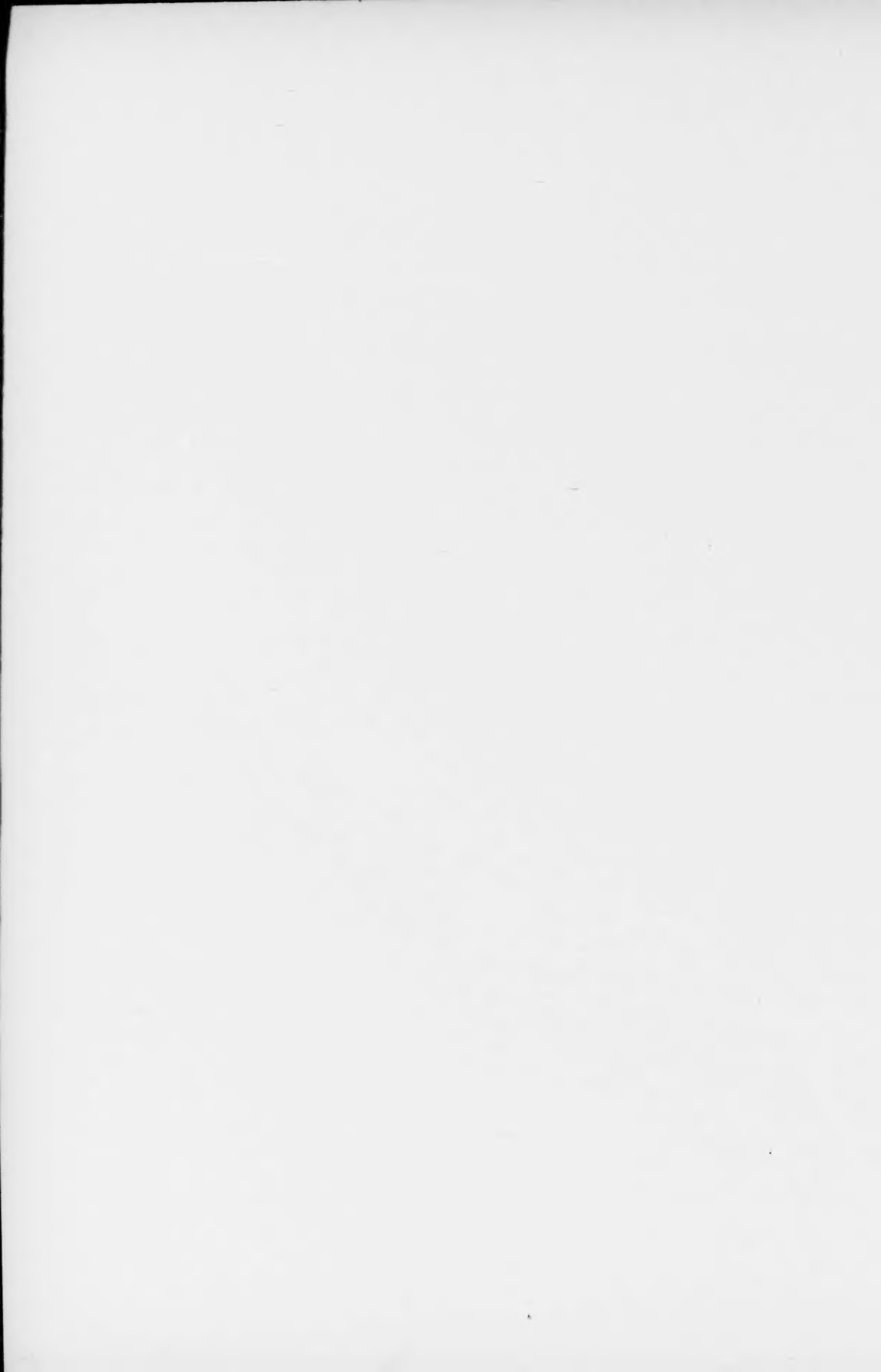


TABLE OF CONTENTS

PAGE(S)

Table of Authorities----- 1b

First Reason for Granting the Writ

This Court should determine whether the holding of Ybarra v. Illinois, 444 U.S. 85 (1979) applies to warrant searches of private homes where the Defendant is selling drugs from his home to third parties.----- 1

Second Reason for Granting the Writ

This court should determine whether the good faith exception applies in warrantless cases.----- 4

Conclusion----- 9



TABLE OF AUTHORITIES

	<u>PAGE(S)</u>
<u>Cady v. Dombrowski,</u> 413 U.S. 443, 440 (1973)-----	3
<u>Maryland v. Garrison,</u> U.S. 107 S.Ct 1013 (1987)-----	4
<u>Michigan v. Summers,</u> 452 U.S. 692 (1981)-----	2
<u>U.S. v. Dionisio,</u> 410 U.S. 1,8 (1973)-----	3
<u>U.S. v. Leon,</u> 468 U.S. 897, 919 (1984)-----	5
<u>U.S. v. Peltier,</u> 442 U.S. 531, 542 (1975)-----	5
<u>Ybarra v. Illinois,</u> 444 U.S. 85 (1979)-----	1,2,6,7
<u>CONSTITUTION</u>	
Amendment IV-----	3,4



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FIRST REASON FOR GRANTING THE WRIT

THIS COURT SHOULD DETERMINE WHETHER THE
HOLDING OF YBARRA V. ILLINOIS, 444 U.S.
85 (1979) APPLIES TO WARRANT SEARCHES OF
PRIVATE HOMES WHERE THE DEFENDANT IS
SELLING DRUGS FROM HIS HOME TO THIRD
PARTIES.

The Defendant in his brief in
opposition does not challenge the
primary premise of the State's argument
that the law enforcement interest



outweighs a third party's privacy interest when executing a search warrant for narcotics. Rather, he points to the similarities between the instant case and Ybarra v. Illinois, 444 U.S. 85 (1979). Also, he emphasizes that the place of the search, a private home rather than a public bar, has no constitutional significance.

However, the main focus of the State's argument in this case is that the law enforcement interest of the police outweighs the Defendant's privacy interest. Therefore, a search can be made in this case absent probable cause. The court in Ybarra did not consider this issue since that court held a search of third parties could not be made absent probable cause. However, in light of the court's holding in Michigan v. Summers, 452 U.S. 692 (1981) which permits a seizure of third parties



without probable cause, this court should consider the issue of whether a search of third parties without probable cause is reasonable under the Fourth Amendment. The Fourth Amendment protects people, not places, and wherever an individual may harbor a reasonable expectation of privacy, he is entitled to be free from unreasonable governmental intrusion. U.S. v. Dionisio, 410 U.S. 1, 8 (1973). Whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case. Cady v. Dombrowski, 413 U.S. 433, 440 (1973).

The State contends this court should accept certiorari in the case to determine whether the instant search was reasonable under the Fourth Amendment.



SECOND REASON FOR GRANTING THE WRIT

THIS COURT SHOULD DETERMINE WHETHER THE GOOD FAITH EXCEPTION APPLIES IN WARRANTLESS CASES.

The defendant in his brief in opposition misinterprets the State's arguments and indicates the State is requesting this Court to adopt a subjective Good Faith exception to the Fourth Amendment. The State has not asserted a subjective Good Faith standard. Rather, the State requests this court to adopt a Good Faith exception to police conduct which is objectively reasonable considering the facts and circumstances presented to the police at the time they made their search. In Maryland v. Garrison, ___ U.S. ___ 107 S.Ct. 1013 (1987), this court held that the search of an apartment not named in a warrant was permissible where the police officers



mistakenly believed their search was authorized by the warrant. This court refused to suppress evidence found in the defendant's apartment because the police action was "objectively understandable and reasonable" Id. at 1019. In U.S. v. Leon, 468 U.S. 897, 919 (1984), this court cited U.S. v. Peltier, 422 U.S. 531, 542 (1975) and stated:

"If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."

In order to determine whether the Good Faith exception applies in this case, this court should consider the issue of whether the police knew or should have known their search was

illegal. The State contends the instant facts were sufficiently distinguishable from Ybarra v. Illinois, 444 U.S. 85 (1979) that the police could reasonable believe that Ybarra was not controlling.

In Ybarra, the court emphasized that there was nothing in the affidavit to indicate that the bartender was selling drugs to third parties. Id, at 90. Here, the affidavit indicated the homeowner was selling drugs from his house and a police informant was going to make his fourth purchase of drugs with \$1,000 of police money immediately preceding the search. The affidavit for the search warrant emphasized the need to prevent the dispersal of the police money:

It will be necessary to 'immediately' conduct a search of the entire residence and surrounding premises of the stated residence following the aforementioned sale of Cocaine for the sum of one-thousand



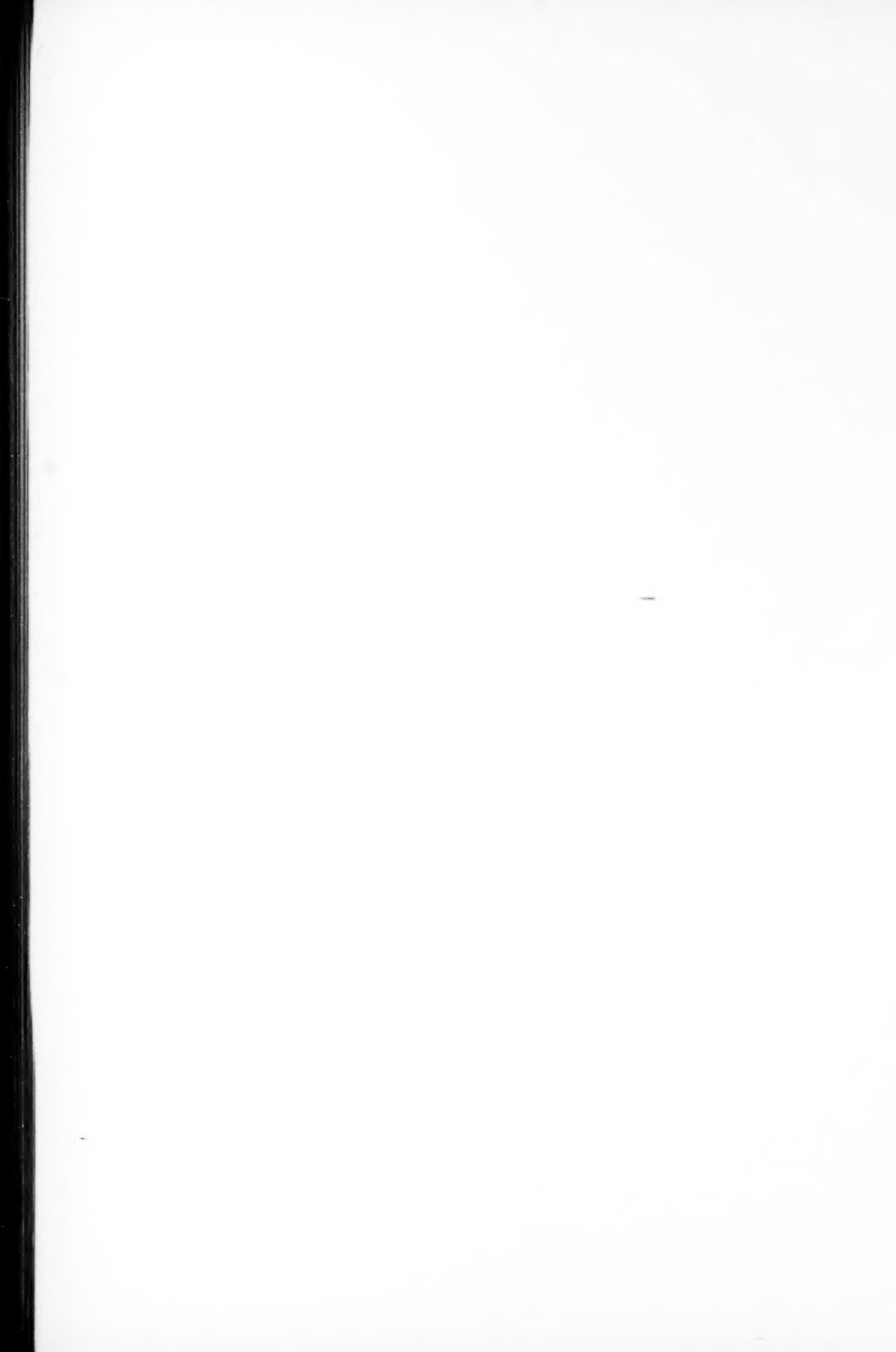
dollars (\$1,000.00) in order to prevent the said THOMAS M. BOWERS from disposing in any manner, of the U.S. Currency in the amount of one-thousand dollars (\$1,000.00) which will be used as evidence following such "controlled drug-purchase" and, any other illegally-possessed items, paraphernalia, records, weapons, or money utilized in an illegal drug-operation which, if located will be used as evidence in the criminal prosecution of the said THOMAS M. BOWERS.

The defendant was unexpectedly in the house during the drug sale and the police believed they had to search him in order to prevent the loss of the police buy money.

Based upon the facts of this case, the State contends the instant search was objectively reasonable. Also, since the facts of this case are distinguishable from Ybarra, the police did not know or should have known that their search was prohibited under the Fourth Amendment. Therefore, the



evidence should not be suppressed
pursuant to the Good Faith exception to
the search warrant requirement.

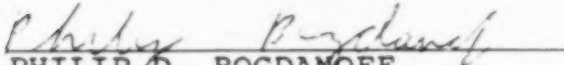


CONCLUSION

Based on the foregoing argument,
the State contends the Petition for a
Writ of Certiorari should be granted.

Respectfully submitted,

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